

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

RASHEEN JAMELL BIGGINS,)

Plaintiff,)

v.)

Case No. CV415-266

PUBLIC DEFENDER'S OFFICE)

and DISTRICT ATTORNEY'S)

OFFICE)

Defendants.)

REPORT AND RECOMMENDATION

Rasheen Biggins has filed a 42 U.S.C. § 1983 complaint for damages and for injunctive relief against the public defender and district attorney's offices involved in the ongoing state criminal proceedings against him. Doc. 1; *see also* attached state court docket showing that his prosecution is still pending.¹

Biggins' statement of his claim, in its entirety: "On 6/24/14 I was [scheduled] for [a] preliminary hearing, which was somehow cancel[led]

¹ As Smith is proceeding *in forma pauperis* ("IFP"), docs. 2 & 3, his action is subject to immediate dismissal if the Court determines that it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915(e)(2) (requiring the dismissal of IFP actions "any time" they raise non-cognizable claims); 28 U.S.C. § 1915A (requiring early screening of all prisoner/detainee complaints against governmental entities or officials and the dismissal of non-cognizable claims).

for what reason I don't know. And my case was sent upstairs to superior court without me waving my preliminary hearing." Doc. 1 at 5. He seeks \$1,000 for each month he's been a pre-trial detainee and requests that all pending charges be dismissed. *Id.* at 6.

Biggins' case is dead on arrival. First, he may not employ § 1983 as a vehicle for seeking the dismissal of the state criminal proceedings, for "a prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement. . . . He must seek federal habeas corpus relief (or appropriate state relief) instead." *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (quotes and cites omitted); *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) ("[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983."); *Cooks v. Sec'y, Fla. Dep't of Corr.*, 599 F. App'x 940, 941 (11th Cir. 2015) (district courts must "ensure that state prisoners use only habeas corpus (or similar state) remedies when they seek to invalidate the duration of their confinement--either directly through an injunction compelling speedier release or indirectly through a judicial determination that necessarily implies the unlawfulness of the

State's custody.'") (quoting *Wilkinson*, 544 U.S. at 81); *Harris v. Purvis*, 2015 WL 3439857 at * 1 (S.D. Ga. May 27, 2015). Thus to the extent Biggins seeks the "termination" of the state charges, which would require his immediate release from custody, he must pursue habeas relief.²

Second, Biggins' damages claims against the defendants are legally unsupportable. Public defender offices are not entities capable of being sued under Georgia law, see *Lovelace v. Deklab Cent. Probation*, 144 F. App'x 793, 795 (11th Cir. 2005), while Biggins' individual public defender (whoever that is -- Biggins never says) is not a state actor for § 1983 purposes. *Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981) ("[A] public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding."). The district attorney, meanwhile, enjoys absolute immunity for conduct "intimately associated with the judicial phase of

² Before Biggins can bring a federal habeas action, he must first exhaust his available state remedies through either a direct appeal or a petition for collateral relief. *Wilkinson*, 544 U.S. at 79 (federal "habeas corpus actions require a petitioner fully to exhaust state remedies, which § 1983 does not"); 28 U.S.C. § 2254(b), (c). If he wishes to proceed via habeas corpus, he must submit a separate petition in compliance with the applicable rules. Such a petition, however, would be subject to immediate dismissal for lack of exhaustion of his available state remedies.

the criminal process,” which preliminary hearings certainly fall within, *Cotterman v. Creel*, 2015 WL 7003424 at * 4 (N.D. Fla. Oct. 19, 2015) (quoting *Burns v. Reed*, 500 U.S. 478, 484 (1991)). And the district attorney’s office, like the public defender’s, is not an entity capable of being sued. *Lovelace*, 144 F. App’x at 795.

Given the sheer frivolity of Biggins’ complaint, it must be **DISMISSED WITH PREJUDICE** and a re-pleading option is not warranted. *Dysart v. BankTrust*, 516 F. App’x 861, 865 (11th Cir. 2013) (“[D]istrict court did not err in denying Dysart's request to amend her complaint because an amendment would have been futile.”); *Langlois v. Traveler's Ins. Co.*, 401 F. App’x 425, 426-27 (11th Cir. 2010); *Simmons v. Edmondson*, 225 F. App’x 787, 788-89 (11th Cir. 2007) (district court did not err in dismissing complaint with prejudice without first giving plaintiff leave to amend because no amendment could have overcome the defendants' immunity). Also because of its frivolity, this case should be recorded as a “strike” under 28 U.S.C. § 1915(g).

Meanwhile, it is time for Biggins to pay his filing fee. His furnished PLRA³ paperwork reflects \$151.67 in average monthly deposits and a \$0.31 average monthly balance over the six month period prior to the date of his Prison Account Statement. Doc. 5. He therefore owes an initial partial filing fee of \$30.33. *See* 28 U.S.C. § 1915(b)(1) (requiring an initial fee assessment “when funds exist,” under a specific 20 percent formula). Plaintiff’s custodian shall set aside 20 percent of all future deposits to his account, then forward those funds to the Clerk each time the set aside amount reaches \$10.00, until the balance of the Court’s \$350.00 filing fee has been paid in full.

Also, the Clerk is **DIRECTED** to send this R&R to plaintiff’s account custodian immediately, as this payment directive is nondispositive within the meaning of Fed. R. Civ. P. 72(a), so no Rule 72(b) adoption is required. In the event plaintiff is transferred to another institution, his present custodian shall forward a copy of this Order and all financial information concerning payment of the filing fee and costs in this case to plaintiff’s new custodian. The balance due from

³ The Prison Litigation Reform Act (“PLRA”) requires the incremental collection of the filing fee from detainees who are allowed to proceed IFP. 28 U.S.C. § 1915(b), (h).

the plaintiff shall be collected by the custodian at his next institution in accordance with the terms of this Order.

SO REPORTED AND RECOMMENDED this 23rd day of November, 2015.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA



CHATHAM COUNTY, GA

Eastern Judicial Circuit of Georgia

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State
VS.
BIGGINS, RASHEEN JAMELL

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Case Information

Court: Superior
Case Number: CR150273
Case Type: THEFT-F
Judge: HONORABLE LOUISA ABBOT
Assistant District Attorney: FRANK PENNINGTON
Date Filed: 2/4/2015
Status: ACTIVE -
Next Event: 1/12/2016 ARRAIGNMENT

Defendant Information

Name: BIGGINS, RASHEEN JAMELL
DIN: S5014324
Gender: MALE
Race: AFRICAN AMERICAN
Height: 69
Weight: 145
Eyes: BROWN
Hair: BLACK

Attorney Information

N/A

Bondsman Information

PAYLESS BAIL BONDS, LLC
4307 OGEECHEE RD STE 104
SAVANNAH, GA
31405

Case Events

Date	Time	Code	Judge	Action
1/12/2016	10:00AM	ARRAIGNMENT	WALMSLEY	
11/10/2015	2:00PM	STATUS CONFERENCE HEARING	LOUISA ABBOT	
9/14/2015	09:00AM	ARRAIGN/TRIAL DOCKET CALL	LOUISA ABBOT	OTHER
8/10/2015	09:30AM	ARRAIGNMENT	LOUISA ABBOT	ARRAIGNMENT
6/4/2015 1:43:38 PM	1:43PM	TRANSCRIPT RECEIVED		
5/5/2015	2:00PM	STATUS CONFERENCE HEARING	LOUISA ABBOT	
3/24/2015	2:00PM	STATUS CONFERENCE HEARING	LOUISA ABBOT	OTHER
2/5/2015	09:30AM	ARRAIGNMENT	LOUISA ABBOT	ARRAIGNMENT

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Charges

Charge	Description	Counts	Severity	Charge Date	Disposition
16-8-7	THEFT BY RECEIVING STOLEN PROPERTY	1	FELONY	2/4/2015	
16-8-7	THEFT BY RECEIVING STOLEN PROPERTY	1	FELONY	2/4/2015	
16-13-30(B)	POSS/DELIVERY OF C/S W/INTENT DISTRIBUT	1	FELONY	2/4/2015	
16-13-30(B)	POSS/DELIVERY OF C/S W/INTENT DISTRIBUT	1	FELONY	2/4/2015	
16-13-30(B)	POSS/DELIVERY OF C/S W/INTENT DISTRIBUT	1	FELONY	2/4/2015	
16-13-30(A)	POSSESSION CONTROLLED SUBSTANCE	1	FELONY	2/4/2015	
16-13-30(J)	POSS MARIJUANA WITH INTENT TO DISTRIBUT	1	FELONY	2/4/2015	
16-13-32.2	POSS DRUG RELATED OBJECT FOR DIST	1	FELONY	2/4/2015	
16-9-1	FORGERY 1ST DEGREE	1	FELONY	2/4/2015	
16-11-131	POSSESS FIREARM BY CONVICTED FELON	1	FELONY	2/4/2015	
16-11-131	POSSESS FIREARM BY CONVICTED FELON	1	FELONY	2/4/2015	

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1/12/2016	10:00AM	ARRAIGNMENT		WALMSLEY	
11/17/2015		ORDER			MTN TO WITHDRAW ATTY J. BYRNE - GRANTED/
11/13/2015		ORDER			MTN TO WITHDRAW ATTY J. BYRNE - GRANTED/
11/10/2015	2:00PM	STATUS CONFERENCE HEARING		LOUISA ABBOT	
10/29/2015		MOTION - TO WITHDRAW ATTY	GRANTED	LOUISA ABBOT	J. BYRNE/NOTIFICATION CERTIFICATE OF INTENTION TO WITHDRAW AS COUNSEL/
10/21/2015		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
9/14/2015	09:00AM	ARRAIGN/TRIAL DOCKET CALL	OTHER	LOUISA ABBOT	
9/9/2015		PRO SE LETTER RECEIVED			
8/25/2015		PRO SE LETTER RECEIVED			
8/24/2015		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			CASE DETAILS RPT/
8/10/2015		STATE'S DISCOVERY DISCLOSURE			DEMAND FOR DISCOVERY REGARDING ALIBI/CERT OF SERV/
8/10/2015	09:30AM	ARRAIGNMENT	ARRAIGNMENT	LOUISA ABBOT	
7/31/2015		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			CASE DETAILS RPT/
7/28/2015		NOTICE DEF ELECTS			TO PROCEED UNDER OCGA 17-16-1 THRU 17-16-10/
7/14/2015		PRETRIAL SCHEDULING ORDER			
6/10/2015		ORDER			PETITION FOR SETTING BOND AND MTN TO DISMISS THE ACCUSATION UPON THE BASIS OF SELECTIVE PROSECUTION IN VIOLATION OF EQUAL PROTECTION - STRICKEN/
6/5/2015		PRO SE LETTER RECEIVED	STRICKEN		PETITION FOR SETTING BOND/MTN TO DISMISS THE ACCUSATION UPON THE BASIS OF SELECTIVE PROSECUTION IN VIOLATION OF EQUAL PROTECTION/
6/4/2015	1:43PM	TRANSCRIPT RECEIVED			02-05-15 ARRAIGNMENT & BOND HEARING, JUDGE ABBOT PRESIDING
5/13/2015		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			CASE DETAILS RPT/
5/12/2015		PRO SE LETTER RECEIVED			
5/5/2015	2:00PM	STATUS CONFERENCE HEARING		LOUISA ABBOT	
3/24/2015	2:00PM	STATUS CONFERENCE HEARING	OTHER	LOUISA ABBOT	
2/6/2015		CONSOLIDATED MOTIONS PACKAGE			CERT OF SERV/
2/5/2015		BOND ORDER			DENIED/
2/5/2015		ACCUSATION FILED - ENTERED			AMENDED/
2/5/2015	09:30AM	ARRAIGNMENT	ARRAIGNMENT	LOUISA ABBOT	
2/4/2015	3:59:48 PM	SCN			INITIAL CASE SCREENING / SCANNING
2/4/2015		ACCUSATION FILED - ENTERED			

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